

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	MB Docket No. 15-52
Petition for Class Waiver of the Commission's)	
Sponsorship Identification Requirements)	
)	

To: The Media Bureau

COMMENTS OF MOUNT WILSON FM BROADCASTERS, INC.

Mount Wilson FM Broadcasters, Inc., (“Mount Wilson”),¹ respectfully submits these Comments in response to the Federal Communications Commission’s (“FCC” or the “Commission”) Public Notice, released March 13, 2015 (the “Notice”), seeking comment on the Petition for Class Waiver of the Radio Broadcasters Coalition (the “Coalition”), filed on November 26, 2014 (the “Petition”).

In the Petition the Coalition² urges the Commission to grant a waiver of the Commission’s Sponsorship Identification (“Sponsorship ID”) rules, which require broadcasters to make an on-air announcement whenever programming has been sponsored by a third party.³

¹ Mount Wilson is the licensee of the following FM and AM radio stations: KBOQ(FM), Seaside, CA, KGIL(FM), Johannesburg, CA, KMZT(AM), Beverly Hills, CA, KMZT-FM, Big Sur, CA, KNRY(AM), Monterey, CA, KYZZ(FM), Salinas, CA, KKGO(FM), Los Angeles, CA.

² The Coalition appears to consist of some of the radio industry’s largest group owners. While the Coalition argues that its requested waiver would serve the public interest, if the Commission were to grant the waiver request, the inevitable result would be even greater radio air-play dominance by the major record labels to the detriment of small, independent artists and recording companies.

³ The Sponsorship ID requirements, which are also known as the “FCC’s Payola Rules,” are designed to inform listeners when programming material is paid for, and by whom. *See* FCC Consumer Guide (available at <http://www.fcc.gov/guides/payola-rules>).

The Petition requests a waiver of the Sponsorship ID rules for radio broadcasts of music and sports programming so long as (1) a station conducts an initial three week “listener educational program,” (2) the station “thereafter airs daily announcements” sometime between 6 a.m. and 7 p.m., and (3) the station posts Sponsorship ID disclosures online.⁴ Grant of the Petition would be inconsistent with the Sponsorship ID provisions of the Communications Act and, in any event, cannot be granted through a waiver but rather would require a proper Notice and Comment Rulemaking proceeding.

I. The Coalition’s Petition Would Result in Illegal Payola in Violation of Both the Letter and Spirit of the Act.

Section 317 of the Communications Act of 1934, as amended (the “Act”) requires all matter broadcast “for which any money, service or other valuable consideration is directly or indirectly paid, or promised to or charged or accepted by, the station so broadcasting, from any person, shall, *at the time the same is so broadcast, be announced as paid for or furnished.*”⁵ The Commission’s rules implementing the Sponsorship ID requirements largely track the language of the Act, but provide broadcasters with the flexibility of only airing a single announcement, once at any time during a particular broadcast.⁶ The language of the Act, and of the Commission’s Sponsorship ID regulations,⁷ therefore make it clear – Sponsorship ID must be aired at the same time that the sponsored programming is aired. And for good reason – the public interest policy

⁴ Petition at 2.

⁵ 47 U.S.C. § 317(a)(1) (*emphasis added*).

⁶ *Sponsorship Identification Rules and Embedded Advertising*, MB Docket No. 08-90, Notice of Inquiry and Notice of Proposed Rulemaking, 23 FCC Rcd. 10682, 10687 (¶ 5) (2008).

⁷ 47 C.F.R. § 73.1212 (a).

goal of the Sponsorship ID requirements is to inform audiences when someone is attempting to persuade them, thus preventing illegal “payola.”⁸

In their Petition, the Coalition downplays the importance of Sponsorship ID by requesting “that the FCC waive the *technical requirement* that a radio broadcaster... include an on-air sponsorship identification announcement ‘at the time [sponsored material] is so broadcast.’”⁹ The Coalition requests that, after an initial three week “listener-education period,” broadcasters be permitted once “daily on-air announcements,” sometime between 6 a.m. and 7 p.m.¹⁰ The Coalition argues that this will allow broadcasters to operate in a “consumer-friendly manner and with fewer interruptions.”¹¹

The argument that fewer Sponsorship ID announcements would result in more “consumer-friendly” or “user-friendly”¹² broadcasts is antithetical to the very purpose of the Act’s Sponsorship ID requirements, which serve to protect audiences from sponsored content without notification. The Act, and the Commission’s Sponsorship ID regulations, are grounded in the fundamental premise that listeners and viewers are entitled to be notified when someone is trying to sell them something through sponsored content.¹³ The Sponsorship ID announcements required under the Act, characterized by the Coalition as “interruptions,”¹⁴ are not mere “technical requirements,” but rather are the very method by which audiences are informed that they are receiving sponsored content.

⁸ Former FCC Chairman Martin perhaps said it best: “I believe it is important for consumers to know when someone is trying to sell them something.” Statement of Chairman Kevin J. Martin, *Sponsorship Identification Rules and Embedded Advertising*, 23 FCC Rcd. 10682 (2008).

⁹ Petition at 2. (*emphasis added*).

¹⁰ *Id.* at 6.

¹¹ *Id.* at 2.

¹² *Id.* at 2, 8 and 15.

¹³ *See supra* FN 8.

¹⁴ Petition at 2 and 9.

On-air Sponsorship ID disclosure within the very program that is being sponsored is the only way to ensure that the purpose of the Act is carried out and that audiences are aware when material has been sponsored by a third party. The FCC has already provided broadcasters with great flexibility by allowing disclosure only once at any time during a sponsored program. The Coalition is not satisfied with this, however, and requests a further relaxation of the Sponsorship ID requirements to allow a single daily announcement, which could occur as early as 6 a.m. This is nothing less than illegal payola – broadcasting of sponsored programming without meaningful Sponsorship ID.

II. The Petition Seeks a Fundamental Modification to the Commission’s Sponsorship ID Regulations Which Requires a Rulemaking.

The Coalition argues that its requested “waiver” is only for a “narrow class” of broadcasters and is therefore permissible under Section 317(d) of the Act. What the Coalition labels as a “narrow class” of broadcasters, however, would include any station broadcasting music or sports that publishes Sponsorship ID information on its website. Undoubtedly, this “narrow class” would include the vast majority of all radio broadcasters.

Although section 317(d) allows the Commission to “waive the requirement of an announcement... in any case or class of cases with respect to which it determines that the public interest, convenience, or necessity *does not require* the broadcasting of such an announcement,”¹⁵ this authority to grant waivers is limited to instances where the Commission determines that Sponsorship ID is not necessary at all. Absent a determination by the Commission that Sponsorship ID is *not required*, any modification of the Sponsorship ID requirements for radio broadcasters can only be achieved through modified regulations properly adopted in a Notice and Comment Rulemaking.

¹⁵ 47 U.S.C. § 317(d).

In fact, the Commission has already launched such a rulemaking proceeding. Almost seven years ago, on June 18, 2008, the FCC issued a Notice of Inquiry and Notice of Proposed Rule Making seeking public comments on proposals to revise the current Sponsorship ID rules.¹⁶ That rulemaking was launched in an effort to modernize the FCC's Sponsorship ID rules and adapt them to modern and sophisticated methods of advertising, such as embedded advertising.¹⁷ Ironically, the still-pending rulemaking proposed to strengthen the Sponsorship ID requirements and even went as far as to request comment on whether the Sponsorship ID regulations should require simultaneous Sponsorship ID at the exact time that the sponsored matter is aired.¹⁸ If the FCC and the Coalition are serious about updating the Sponsorship ID disclosure rules, then they have only to look to the open 2008 rulemaking.

III. Online Disclosure of Sponsorship ID is Not Equivalent to Broadcast Announcements.

In the Petition the Coalition argues that online disclosure of Sponsorship ID information would provide “far greater Sponsorship ID information to consumers in a new, more detailed, and more easily accessible way.”¹⁹ There can be no doubt about the potential benefits of online disclosure of Sponsorship ID as a supplement to broadcast announcements. If the Coalition feels that online publication of Sponsorship ID disclosures will serve their listeners, they can, of course, post this information on their stations' respective websites. Doing so, however, cannot replace the requirement of on-air Sponsorship ID announcements made during the sponsored programming to inform radio audiences as they listen to sponsored programming. Anything less would result in illegal payola.

¹⁶ *Sponsorship Identification Rules and Embedded Advertising*, 23 FCC Rcd. at 10684 (¶ 4).

¹⁷ *Id.* at 10682 (¶ 1).

¹⁸ *Id.* at 10691 (¶ 12) (requesting comment on concurrent disclosure requirements).


¹⁹ Petition at 3.

Broadcast Sponsorship ID announcements is the only method of ensuring that radio listeners receive the notice they are entitled to under the Act. Not all radio listeners have smart phones to easily review online Sponsorship ID information. Moreover, one announcement as early as 6 a.m. is not adequate to make listeners aware that programming throughout the day has been sponsored or to inform listeners that they can access additional Sponsorship ID information online. When Sponsorship ID announcements are broadcast, there is greater certainty that the announcements are reaching the very listeners who are entitled to be informed that programming has been sponsored. Under the Coalition's Petition, there is no guarantee that Sponsorship ID disclosures will reach listeners, and audiences will inevitably be exposed to illegal payola.

Mount Wilson respectfully urges the Commission to deny the Coalition's Petition because it would undoubtedly result in commercial material masquerading as programming to reach unsuspecting listeners, and would amount to legalization of payola.

Respectfully submitted,

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